

**HON'BLE SRI JUSTICE J. CHELAMESWAR
AND
HON'BLE SRI JUSTICE D.APPA RAO**

WRIT PETITION No.18898 of 2006

Date: 02-11-2006

Between:

M/s. Shivnath Rai Harnarain (India) Ltd.

...Petitioner.

And

The Assistant Commissioner(CT) LTU,
Kakinada, East Godavari District and others.

... Respondents.

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ORDER : (Per Hon'ble Sri Justice J. Chelameswar)

The writ petition is filed with the prayer as follows:-

“It is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in passing the impugned assessment order dated 18-8-2006 in proceedings ref.RF.No.3/2006-07 as illegal, arbitrary, high handed, without authority of law and jurisdiction and set aside the same; and declare that there is no inter-State sale of rice between the petitioner's branch at Kakinada and the head office at New Delhi since the petitioner's head office and its branches are one and the same and constitutes a single legal entity; and also declare that the transactions cannot be declared as inter-State sales since there is no movement of goods from Andhra Pradesh to Delhi which is *sine qua non* to construe a transaction as inter-State sale; and also declare that the movement of goods from Kakinada to Customs House at Kakinada Port does not amount to inter-State movement of goods; and further declare that the petitioner is entitled for exemption of tax on the disputed turnover under Section 5(1) of the CST Act as export sales and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

The petitioner is a Limited Company and is a registered dealer

under A.P. Vat Act, 2005 and Central Sales Tax Act, 1956 (for brevity 'the Act') and is an assessee on the rolls of the first respondent herein. The petitioner's Head Office is situated at New Delhi. It has various Branch Offices all over the country, including the one in Andhra Pradesh at Kakinada. The petitioner is carrying on its business in purchase and sale of pulses and grains and is a recognized Export House under the Customs Act. For the Assessment Year 2005-06 the petitioner filed returns under the Act, disclosing a total turnover of Rs.305,00,07,230/- and claimed exemption from the tax on the ground that the entire turnover represents the sale value of the goods exported by the petitioner out of India and, therefore, exempted under the provisions of Section 5(1) of the Act.

The first respondent issued a show cause notice dated 14-2-2006 proposing that the turnover would be treated as inter-State sale and, therefore, liable to tax under the Act. The petitioner filed his objections. Thereafter, another show cause notice dated 14-6-2006 was issued by the second respondent, in substance, to the same effect as the show cause notice issued by the first respondent. Once again the petitioner, it appears, filed its objections. By an order dated 18-8-2006, the second respondent made an assessment treating the entire turnover to be the turnover representing the sale price of inter-State sales. Hence the present writ petition.

Heard learned counsel for the petitioner and the elaborate submissions made by the learned Government Pleader for Commercial Taxes.

The second respondent, while coming to the conclusion that the entire turnover is liable to tax under the Act, as the sale turnover of inter-State sales, gave his reasons as follows:-

"Regarding the point of the dealer that there is no movement of

goods from Kakinada to New Delhi to categorise it as an Inter-State trade, it is to be seen that the export of Rice is being done through Kakinada Port by S.H.(India) Ltd., New Delhi. Most of the exports are to African countries. As such it is convenient to export the rice purchased from various Rice dealers in A.P. directly through Kakinada port instead of first transporting to New Delhi and then back to Kakinada for eventual export. Thus the Rice is being delivered to S.H.(India) Ltd., New Delhi at Kakinada Port by S.H.(India) Ltd., Kakinada as per their implicit arrangement. Moreover movement of goods from the State of A.P. to outside it cannot be denied, as the territory under the control of Customs department is under the control of Government of India. As soon as the Rice enters the Customs boundaries, it leaves the territory of the State of Andhra Pradesh. Thus there is a definite movement of goods from the State of A.P. to an area outside it, which is taken up as per the implicit arrangement between S.H.(India) Ltd., New Delhi and S.H.(India) Ltd., Kakinada.”

The fact that the goods were exported is not disputed by the second respondent. On the other hand, it is observed that most of the exports are to the African countries. A reading of the above paragraph indicates that the second respondent is of the opinion that since the petitioner, which is a Body Corporate with the registered office at New Delhi, outside the State of Andhra Pradesh, made purchases in the State of Andhra Pradesh, there is an inter-State sale of the goods. At page-7 of the assessment order, the second respondent holds that since the purchase price of the exported material was paid by the petitioner by way of account transfer from New Delhi to Kakinada, therefore, he comes to the conclusion that the property in the commodity purchased by the petitioner company at Kakinada was transferred to the petitioner company at New Delhi for a valuable consideration. The relevant portion reads as follows:-

“.....Thus there is a transfer of property in the Rice purchased by S.H.(India) Ltd., Kakinada from various Rice dealers in A.P. to S.H.(India) Ltd., New Delhi which then carried out the export, as S.H.(India) Ltd., New Delhi has not purchased any rice itself

in the State of A.P. This coupled with the fact that various amounts have been transferred from S.H.(India) Ltd., New Delhi to the Bank account No.01000050058 of State Bank of Mysore, Kakinada branch of M/s. S.H.(India) Ltd., Kakinada on various dates as a consideration for the Rice transferred to S.H.(India) Ltd., New Delhi, satisfy the required conditions for classifying the transactions as a sale. It cannot be classified as a branch transfer as the dealer himself admitted of the fact. Moreover the transaction is not covered by 'F' forms, which is a necessary condition to classify a transaction as a branch transfer. Thus the property in Rice purchased by S.H.(India) Ltd., Kakinada was transferred to S.H.(India) Ltd., New Delhi for a valuable consideration at Kakinada through an implicit arrangement and as such it is a deemed sale."

Under proviso to Section 6(1) of the Act, any sale of goods, which is a sale in the course of export those goods out of the territory of India, is exempted from the levy under the Act. The said proviso reads as follows:-

"6(1) x x x x x

Provided that a dealer shall not be liable to pay tax under this act on any sale of goods which, in accordance with the provisions of sub-section (3) of Section 5 is a sale in the course of export of those goods out of the territory of India."

The levy under the Act is essentially on inter-State sale of goods. Sub-section (1) of Section 6 of the Act stipulates such a levy, which reads as follows.

"6.Liability to tax on inter-State sales.

(1)Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales (of goods other than electrical energy) effected by him in the course of inter-State trade or commerce during any year on and from the date so notified;"

The expression, whether a particular sale took place in the course of inter-State trade or commerce, is required to be decided in accordance with the stipulation under Section 3 of the Act, which reads

as follows:

“3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce:

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

- (a) occasions the movement of goods from one State to another; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.”

The essential ingredients of the inter-State sale, as can be seen from the language of Section 3 of the Act, are that the sale occasions the movement of goods from one State to another; or that such sale took place by a transfer of documents of title to the goods, while the goods are in movement from one State to another. The most basic fact is that there is a movement of goods from one State to another.

In the instant case, even according to the assessment order, there is no movement of the goods. Assuming, for the sake of arguments, that the title to the goods, which eventually, were exported was acquired by the petitioner, which is situated outside the State of Andhra Pradesh, it does not amount to movement of goods. There is nothing in the law of the land, which prohibits a person, who is a resident of one State, from acquiring property in another State, barring in exceptional situations, like acquisition of immovable property in the State of Jammu & Kashmir. Therefore, the fact that the petitioner company being a territory of Delhi purchased a commodity in the State of Andhra Pradesh, does not make the sale inter-State sale so long as the goods do not move out of the territory of Andhra Pradesh pursuant to such a purchase. It is not the case of the respondents that pursuant to the purchase made by the petitioner company, the goods moved out

of the State of Andhra Pradesh i.e., to Delhi, where the registered office of the petitioner company is located. On the other hand, after the purchase, the goods were directly exported through the Port of Kakinada, which is also situated in the State of Andhra Pradesh.

The more interesting finding recorded by the second respondent, as can be seen from extract-(1) above, is that the respondent is of the opinion that since the Customs Port of Kakinada is under the control of Government of India, it becomes a territory outside the State of Andhra Pradesh and, therefore, there is an inter-State sale. The statement resulting from a fact or imagination of what the Law is to be for the purpose of collecting the revenue. But unfortunately, there is no basis of law for such a conclusion that a Customs Port located in the country ceases to be the part of territory of a particular State in which it is located. It is only for the purpose of various administrative measures, the possession and control of the Customs Port vest with the Union of India, but that does not automatically mean that the said area ceases to be part of the territory of the State.

In the circumstances, we are of the opinion that the impugned order is perverse, at the least wholly unsustainable in law and, therefore, set aside.

The writ petition is accordingly allowed. There shall be no order as to costs.

J.CHELAMESWAR, J

D.APPA RAO, J

02-11-2006.
Msr.

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